received 8/11/97

IN THE CIRCUIT COURT IN AND FOR DADE COUNTY FLORIDA

GENERAL JURISDICTION DIVISION

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HOWARD A. ENGLE, M.D.,

Plaintiff,

vs. No. 94-08273 CA (20)

RJ REYNOLDS TOBACCO COMPANY, et al.,

Defendant.

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Pages 1 through 114, inclusive.

DEPOSITION OF RICHARD W. MIZERSKI, Ph.D.

July 9, 1997

REPORTED BY:

KUMI TAIRA, CSR NO. 6573

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Jenny
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I N D E X

DEPOSITION OF RICHARD W. MIZERSKI, Ph.D.

EXAMINATION BY: PAGE

MR. HOAG 6

E X H I B I T S

None marked

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A P P E A R A N C E S

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BE IT REMEMBERED that, pursuant to Notice of Taking Deposition and on Wednesday, July 9, 1997, commencing at the hour of 10:05 a.m., before me, KUMI TAIRA, there telephonically appeared

RICHARD W. MIZERSKI, Ph.D.,

called as a witness by the Plaintiff who, having been duly sworn, was examined and testified as hereinafter set forth.

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RICHARD W. MIZERSKI, Ph.D.

having been duly sworn, testified as follows:

MR. MCDERMOTT: All right. The witness is sworn.

EXAMINATION BY MR. HOAG

MR. HOAG: Q. Can you state your name for the record, please?

A. Richard William Mizerski, M-i-z-e-r-s-k-i.

Q. And you have a Ph.D.; is that correct, sir?

A. That is correct.

Q. Have you ever been deposed before?

A. Yes, I have.

Q. How many times?

A. Oh, perhaps ten or 15.

Q. Have you ever been deposed over the telephone before?

A. No.

Q. One of the things about the telephone deposition that may be a little different from any other deposition is the fact that the transmission is slightly delayed, and sometimes I'm not going to

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be able to know whether you have answered the question or not and I may repeat the question, not because I'm being rude, but because I don't know whether you've answered it or not yet.

Also, another thing that happens sometimes during these telephone depositions is if someone moves any papers or anything, part of the transmission can be lost, and that's another reason why, under certain circumstances either I may need to repeat things or you may need to have them repeated; is that all right with you?

A. Yes.

Q. My name is John Hoag. I am an attorney. I represent the law office of Stanley Rosenblatt, a professional association, along with his wife Susan Rosenblatt, who represents the plaintiffs in this case.

When were you first contacted to be a witness in this case?

A. To the best of my recollection, perhaps two months ago. Between a month and two months.

Q. Have you ever done any work of any kind, other than this case, on any case related to tobacco issues?

A. Yes.

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Q. What other case or cases have you worked on?

A. The Mississippi and Florida cases.

Q. The Mississippi Attorney General's case?

A. That's correct.

Q. And the Florida Attorney General's case?

A. That's correct.

Q. When did you first start working on those cases, and maybe you didn't work on them all at the same time, but which was the first one you started to work on?

A. Well, I think it would be difficult to say specifically working on. I think discussions concerning the general area may have started in late December of 1996.

Q. Who first contacted you?

A. An individual or -- I really don't remember. It would be -- I don't remember who first contacted me.

Q. What law firm did the person represent who first contacted you?

A. I believe it would be Jones, Day.

Q. Who was the client that Jones, Day was representing?

A. I believe it would be RJ Reynolds.

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Q. At that first discussion, what was discussed with you?

A. Oh, I don't remember all of the specifics, just general areas about tobacco promotion and marketing.

Q. How did they come to contact you?

A. I'm not sure.

Q. Did they tell you how they came to understand that you were an expert in this area?

A. Well, I have been doing some work in terms of publicity, academic, publicly, and done some other things in terms of reviewing tobacco marketing.

Q. When you say as far as reviewing tobacco marketing, what do you mean?

A. I had, in the past, had an opportunity to review tobacco marketing.

Q. When you say tobacco marketing, what do you mean?

A. That would be studies about the marketing of tobacco. I have appeared before some congressional subcommittees back in the eighties concerning tobacco marketing and the effects of tobacco marketing on consumers.

Q. Back in the eighties, when you appeared

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before congressional subcommittees, during that time frame, were you hired by any tobacco company or any representative of tobacco companies to be a consultant or expert?

A. Yes.

Q. Which company or companies?

A. I was hired by Wambol Carlisle.

Q. Wambol Carlisle?

A. That's correct.

Q. What time frame were you hired by them?

A. I would say approximately 1987. 1987 or 1986.

Q. Who was Wambol Carlisle representing?

A. I'm not sure all of the people he represented. They did represent RJ Reynolds Tobacco.

Q. And was that time frame, that 87, '88 time frame, approximately the first time that you were contacted by any representative of the tobacco company to do any consulting work for them, for a tobacco company?

A. To the best of my recollection, yes.

Q. Now, prior to that time that you were first contacted by a representative of the tobacco company, had you ever done any research related to

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marketing for tobacco or tobacco products?

A. Yes.

Q. What was the nature of the research that you had done prior to the time you were first contacted by a tobacco company representative?

A. I was employed by the Federal Trade Commission as a staff consultant in marketing and consumer decision making.

Q. What year or years were you employed by the Federal Trade Commission?

A. I was on the staff full time as an employee from late 1979, approximately September, and left being employed there at, I think, late December of 1980. I continued to work on a project basis with the Washington head office, and later with the Atlanta regional office.

Q. When you say project basis, what do you mean?

A. That there would be investigations or an evaluation for research of cases that I would be considered to do some work with as a -- on a project basis, so they would ask me to analyze data, look at documents to provide some input into marketing issues.

Q. Were those marketing issues related to

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tobacco or tobacco products?

A. No.

Q. What was the -- what was your position at the FTC when you worked there from '79 to '80?

A. I was a staff consultant for marketing and consumer decision making.

Q. Was that your title?

A. I believe so.

Q. Did you do any work related to marketing and consumer decision making concerning tobacco or tobacco products?

A. Yes.

Q. What work did you do during that time period?

A. A range of activities generally associated with the investigation of the cigarette industry.

Q. When you say generally associated with investigation of the cigarette industry, what investigation of the cigarette industry are you referring to?

A. There was a FTC investigation of the cigarette industry.

Q. Was there more than one FTC investigation of the cigarette industry, or only one

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that you're referring to?

A. I was involved with one investigation. There may have been more. In fact, there probably is one now, but I was involved with one from the time I started in September 1979 through, largely, '80.

Q. What was the one that you were involved in?

A. The ongoing one during that period.

Q. What was that, what was it about?

A. It was investigation of the cigarette industry.

Q. What were they investigating about the cigarette industry?

A. They were investigating the marketing of the cigarette industry, impact of marketing activities on consumers, and potential remedies for that.

Q. Now, was this before or after the broadcast ban?

A. After the broadcast ban.

Q. What were your duties as far as investigating the activities of the tobacco companies at that time?

A. I had a broad range of activities that

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would include such things as evaluating documents of the cigarette industry, developing warning labels, collecting data through surveys, testing warning labels, developing potential remedies for actions concerning the marketing.

Q. What potential remedies did you develop?

A. Warning labels.

Q. Did you develop any other remedies?

A. Well, it would be the specific remedy I was involved in. I was involved in developing potential material for -- if there was going to be any kind of litigation.

Q. What kind of material are you talking about that you were in charge of developing related to litigation?

A. Theories about consumer marketing abilities and legislation that might be associated with that.

Q. What theories about consume decision making did you develop or participate in that were related to potential litigation at this period of time when you worked for the FTC?

A. Well, I guess I would have to ask my counsel whether this would be appropriate, but this is material that I developed under confidentiality

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with the Federal Trade Commission. And I don't know if the specific consumer behavior theories have ever been discussed outside of the FTC.

MR. MCDERMOTT: This privilege belongs to the government. To the extent there is a privilege, and whether they are interested in preserving it, I don't know. Is it necessary to discuss this in order to describe your opinions or discuss your views on tobacco?

THE WITNESS: No, it is not.

MR. HOAG: Well, it's necessary for me to know what information he provided to the FTC when he was an employee. And I think the reasons for that are very obvious.

MR. MCDERMOTT: Well, again, to the extent that Dr. Mizerski is, or considered himself to be, under some confidentiality with obligation while he was with the government, I'm not in a position to say you can disregard those. I'm not sure you are either. I am not sure what continuing obligation he has or continuing interest the government has, but I can't -- you know, I can't relieve him from any obligations.

THE WITNESS: Perhaps if I just gave you broadly some areas that I looked at. I think going

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into specific theories and the theoretical papers I developed, and the arguments I put forward, would be areas that I don't think I should talk about.

MR. MCDERMOTT: Well, why don't you give a general description where you feel comfortable and see where we go from there.

MR. HOAG: We can also do that. But let me ask some specific questions before we do that general description.

MR. MCDERMOTT: All right.

MR. HOAG: Q. You actually prepared papers for the FTC; is that correct?

A. That's correct.

Q. And these papers that were prepared, it's your understanding these papers were confidential and remain confidential to this day?

A. That's correct.

Q. What leads you to the conclusion these papers prepared for the Federal Trade Commission related to the tobacco industry remain confidential to this day?

A. Because I signed a confidentiality agreement. And these were arguments, discussions that have not come out from the FTC, and they involve my discussions and development of potential

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witnesses' testimony.

Q. This is potential witnesses to testify concerning what?

A. Possible remedies in terms of action against the cigarette industry.

MR. MCDERMOTT: This is in connection with contemplated possible litigation?

THE WITNESS: Yes. This is contemplated possible litigation that never got that far. The Federal Trade Commission did not move to go any further, at least that I'm aware of. It ended up with a 1981 staff report on the cigarette industry.

MR. HOAG: Q. What was it supposed to remedy? When you talk about remedies, what was it supposed to remedy?

A. Well, I can just say my work would involve -- there would be theories, legal theories and legal arguments that might be put forward based on potential information we may obtain. The remedies would be primarily information remedies, and the reason it didn't go forward is beyond all of my understanding, but presumably they did not find or could not justify the legal aspects and, therefore, the potential remedies I was asked to implement wouldn't be implemented.

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Q. You said information remedies. What was it supposed to remedy? What was the problem that was to be remedied?

A. I wouldn't say there was a problem. People assumed there would be a problem in anticipation of areas that might come up. I was asked in advance to develop some ideas based on consumer making theory information available, data I collected, potential remedies, and that would be the term they would use at the FTC, remedies to some of these actions.

Q. What actions was it supposed to remedy?

A. Well, for example, if people did not have enough information about the health effects of smoking, there would be some remedies involved in that, and that would be the warning label area.

To the extent that people did not -- were potentially deceived by advertising or were given impressions about advertising, I was asked to develop potential remedies for that.

To the extent that we needed to have an argument about how people make decisions in terms of initiating smoking or continuing to smoke, or would there be any other information remedies or other potential remedies that would be possible, I was

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asked to develop contingencies in that area.

Q. You said to the extent that consumers were deceived by advertising, are you talking about tobacco advertising, correct?

A. Correct.

Q. Were you asked to reach a conclusion by the FTC as to whether or not there was anything deceptive about the advertising done by the tobacco industry?

A. No.

Q. That wasn't -- did anyone else do that?

A. No. My personal opinion was never important. I was given a task to do and that was a job at the Federal Trade Commission. You try to separate your own feelings about issues and try to develop the best information or remedy or whatever actions that were asked of me.

Q. You came up with written recommendations for how to correct deceptive advertising if in fact it was occurring in the tobacco industry; is that correct?

MR. MCDERMOTT: Object to the form of the question, assumes facts not in evidence, misstates prior testimony.

MR. HOAG: Q. Is that correct?

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A. Maybe you could repeat that again.

(Record read.)

THE WITNESS: Well, I don't think I would phrase it that way. Again, we're talking about, you know, some years ago, so it's very hard for me to be specific. I only remember several issues. But they may have a particular theory they wanted to potentially use if something was found and they could justify.

I was asked to develop, was there consumer research in that area that would sort of buttress the opinions that they may want to put forward? Were there remedies if, in fact, any problems were found that could be justified in the consumer or marketing literature? I would write some opinions. I would talk with people and others. I would add to opinions. I would review opinions. So there was a whole broad range of activities. So it wasn't as if I sat there and cranked out page after page of remedies and what to do,, it was much more of a synergistic process.

MR. HOAG: Q. How many people did you work with?

A. During the time -- just on tobacco?

Q. Yes, on these issues we're talking about

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that are tobacco industry related?

A. Because these are similar issues on a broad range of products I worked on. But if you're talking about specific individuals related with the tobacco investigation, it would be not only people in the Federal Trade Commission, but it would also be various suppliers of data or polling or experiments, and so that might be up in the area of about 20 different individuals, or perhaps more.

Q. Did you have access to this polling data?

A. Yes.

Q. Is this polling data confidential?

A. I don't know.

Q. Have you ever written anything concerning the polling data?

A. Outside of the Federal Trade Commission?

Q. Well, let's start with within the Federal Trade Commission.

A. Yes.

Q. Is it your opinion that anything you wrote related to that polling data is confidential and cannot be revealed?

A. I don't know. I've never seen the

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polling data come out, so I really don't know whether it's confidential or not.

Q. What is your assessment of the polling data?

A. Well, there was a broad range of polling that I was associated with and actually developed questions concerning. And they would include perceptions and understanding of health effects of smoking and other activities and views about smoking. And the views about -- well, views about smoking.

Q. What were the results of this polling that was done?

A. There were many results. It depended on the questions I was asked and the poll that was used.

Q. What results do you recollect?

A. Well --

MR. MCDERMOTT: Dr. Mizerski, to the extent you can describe things and are comfortable doing so, please feel free. If you feel you need to check with somebody, or if you are uncertain and want to check, again, we cannot advise you on that. We can't invoke or waive someone else's confidentiality and somebody else's privilege.

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MR. HOAG: Especially an organization that's in direct conflict with the tobacco industry's position at this point, that would be really difficult for you to do.

MR. MCDERMOTT: Well, that's sparring. I'm sure it has a place somewhere. I'm not sure it helps here.

THE WITNESS: I can only -- again, we're talking about working with a number of suppliers, probably five, six, seven, maybe more than that, on a broad range of issues. And I guess the best I can give you at this moment would be a general perception about the results.

MR. HOAG: Q. What is your general perception of the results?

A. The general perception of the results were that in terms of health information, that there was a very high level of the understanding and comprehension of the health effects of smoking, that this was across all age categories, that the -- there really were no differences between smokers and nonsmokers in terms of their understanding of this health information. And for most of the areas that were discussed, there tended to be an overestimate of the health effects of smoking.

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Q. When you say an overestimate of the health effects of smoking, what do you mean?

A. I mean, for example, that the perception of the number of individuals who get lung cancer because they smoked was substantially higher than the factual evidence.

Q. What was the factual evidence?

A. I believe it's -- I don't remember specifics, but I believe somewhere in the area of five to seven percent. Certainly less than ten percent of smokers get lung cancer.

Q. Five to seven percent of people who smoke end up contracting lung cancer?

A. Correct.

Q. It is your opinion that cigarette smoking causes lung cancer?

A. I would say cigarette smoking causes some forms of lung cancer.

Q. What about heart disease?

A. Smoking would be, I believe, a risk factor.

Q. And did people in this poll misunderstand the likelihood they would die from heart disease as a result of smoking?

MR. MCDERMOTT: Object to the form of

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the question.

THE WITNESS: Well, "misunderstand," let's put it this way.

The concept of a risk factor is difficult for people to understand, and indeed that was one of the things I was asked to work with. Phraseology that one might use to get across that particular point and yet be truthful in the kind of information that was provided to individuals when they made that decision.

MR. HOAG: Q. This was your task that you were given by the Federal Trade Commission when you worked there?

A. Yes, this is one of many tasks, yes.

Q. How did you go about to accomplish that task?

A. In working with attorneys and paralegals and suppliers. I would, first of all review, the literature in terms of past level of information people had. I would develop questions that would be used in various surveys, testing the use of that information and possible warning labels in various ways.

Q. Now, when you say five to seven percent of the people who are smokers ultimately contract

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lung cancer, what do you base that on?

A. Well, I base that on information I had at that time at the Federal Trade Commission. That would be medical studies. We had a number of people who worked in the medical area that would provide us with at least the latest knowledge. That's the best of my recollection of the figures.

Q. And the people who participated in this poll, what did they think the likelihood that they would contract lung cancer from smoking was?

A. I don't remember the specifics, but I believe it was in excess of 20, maybe 30 percent.

Q. Were they asked in this poll the likelihood that they would contract heart disease as a result of smoking cigarettes?

A. I don't remember the exact phraseology. Those questions were asked in a number of different ways, so I don't remember exactly how they were asked.

Q. And did they overstate the idea they would contract heart disease if they continued smoking cigarettes?

A. Depending on the way it was asked. I don't think at that time there was a real clear understanding -- well, we call it a risk factor, so

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I don't know if you can pin it uniquely on cigarette smoking, nor do I remember that being the perception of people working at that time. Again, it's a risk factor, one of many factors that may work in conjunction with each other to be associated ultimately with heart disease.

Q. But you can pin lung cancer uniquely on smoking, correct?

A. That's the best of my recollection. There were forms of lung cancer that could be uniquely formed or associated with cigarette smoking.

Q. Were you involved in any way in the development of the warning label that said, "Warning - cigarette smoking causes heart disease"?

A. Well, probably. I -- I left before those particular warning labels were put into effect. My understanding is that research that I would develop and worked with other people to obtain was ultimately used to develop warning labels. And also the research I did on potential warning labels was used, but that's what I have been led to believe.

Q. Now, did you consider -- so you don't recollect for sure whether or not you worked on the

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warning label that included the terminology "Cigarette smoking causes heart disease"?

A. Well, if you --

MR. MCDERMOTT: Object to the form of the question. I think you misstated the warning but....

THE WITNESS: You're talking, I think, about the 1984 rotating warning labels? That information, or the basic phraseology, many of those were tested, yes, by me, along with others.

MR. HOAG: Q. What was the nature of your tests?

A. They ranged from qualitative focus group tests to surveys to portfolio tests. Those would be the basic types that I would use.

Q. What is a qualitative focus group test?

A. Focus group is a form of collecting data that would be, I guess, generally considered qualitative research, in the sense you are not applying statistical techniques to it and you cannot generalize to any population.

Q. I'm still not sure what that means. What is a focus group?

A. Focus group, basically, is a format in which you would have a conference room or you

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probably would use a facility. We used facilities that would have microphones in one wing. And we would recruit various groups of people, normally individuals that were similar. That might be young people 12 to 14, 12 to 16, or we might have 18 to 31 or 25 to 34, or various age and sex cohorts, and put them in a room and proceed to go through a -- sort of an unstructured interview in the sense that you would start people talking. And basically, it was the dynamics of the group environment that would provide you with an understanding of how people think about issues and how they would react to issues.

This was generally transcribed and a report would be made by a supplier or I would have a report evaluating what was said. These would usually not only have audio tapes but videotapes as well.

Q. Did you have access to the transcriptions?

A. Did I or do I?

Q. First, did you?

A. Yes. I was there when it was done and I also provided my own evaluations.

Q. Written evaluations?

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A. Correct.

Q. The evaluations that you prepared yourself, did you keep any copies of any of those?

A. No, I don't think so.

Q. So everything that you ever prepared for the FTC is in the possession of the FTC but it is not in your possession; is that correct?

MR. MCDERMOTT: Object to the form of the question, no foundation. I'm not sure he's prepared to say what the FTC has retained after almost 20 years.

MR. HOAG: Q. Well, let me rephrase.

None of the material that you prepared for the FTC is in your possession; is that correct?

A. I don't remember any. I moved to Australia, and during that process culled material that I didn't think would be useful, I don't believe I have any of that left.

Q. When you say you culled material you thought wouldn't be useful, what are you specifically referring to?

A. Things that could be used in the classroom.

Q. That would be some of things that you used for the FTC?

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A. It certainly wouldn't be any reports or anything like that. If I had interesting advertising, or I might have some scripts of material, but I haven't found any of that. That would be the kind of thing that I used in classes where I would teach individuals how to do a focus group and such.

But when I went to Australia, I was constrained in what I could bring over there and what I could move, and I don't believe I have any of that material left.

Q. Do you consider any advertisements used by any company that's part of the tobacco industry to be deceptive?

A. No. That's pretty broad. No, I don't remember anything that was deceptive.

Q. What is your definition of deceptive?

A. Deceptive would be -- there could be several, but primarily, if the individual is taking away from the ad something that is not true, is developing expectancies on their part that are not tied to reality.

Q. Is that your complete definition of deceptive, what you consider to be deceptive?

A. That's basically a working definition I

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would use when I would be doing things concerning evaluating advertising.

Q. Now, you're familiar with the Marlboro man campaign, correct?

A. Yes.

Q. Did you do any research concerning the Marlboro man campaign?

A. No.

Q. Do you know how that campaign first began?

A. Only from discussions with some people who helped put it together many years ago.

Q. What discussions did you have with some people that helped put it together many years ago?

A. When I was an undergraduate at Northwestern, one of my professors, Stewart Britt, was involved in the campaign with, I believe, Leo Ovett.

Q. What did you discover during that campaign and its development?

A. It's very difficult to, you know, separate out what he told me 30 years ago, I suppose, and what I have read since and discussions I've had, anecdotal material that I have come across, but it was a repositioning of a brand. That

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included not only the product but the advertising and other marketing activities.

Q. Repositioning of a brand? When you say repositioning, what do you mean?

A. Repositioning it in the market, perhaps appeal to a different group of individuals, or have those people who are using it right now to view it differently, vis-a-vis other brands in the market place.

Q. How did Marlboro, or Phillip Morris, decide on the image of a cowboy for the purpose of repositioning their brand?

MR. MCDERMOTT: Object to the form of the question, no foundation.

MR. HOAG: Q. You can answer.

A. I don't know.

Q. You don't know?

A. I don't know.

Q. You never discussed this with these people that you had access to; is that correct?

A. Well, I didn't say that. That particular question about how they decided on the Marlboro man was not specifically discussed, or if it was, I don't remember it. I think discussions were more in line with this was an illustration

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visual that better communicated the idea of a brand that would be more masculine than the previous iteration.

Q. Now, what does the cowboy image represent?

A. I would say it represents more male oriented sort of Americana, western Americana.

Q. When you say male oriented, what do you mean?

A. That it had sort of a masculine visual as compared to the feminine positioning that it had before.

Q. Now, that particular ad campaign was developed shortly after -- well, let me rephrase.

That particular ad campaign was developed in the 1950's, correct?

A. I don't think so. Which one, are you talking about the feminine one or masculine one?

Q. I'm talking about the Marlboro man.

A. I think it was in the sixties, to the best of my memory.

Q. So it would surprise you to know that it was in the 1950's it began then, correct?

A. Well, I hadn't really -- I wouldn't say it would be, would surprise me. I would say it

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would be interesting information.

Q. Now, the Marlboro cigarettes, your understanding was that it was originally a woman's cigarette; is that correct?

A. I don't know if we called it a woman's cigarette, but it had more of a feminine, I guess, visual. As I remember it, the cigarette itself was different, the packaging was different. And I have only seen, I think, one or two ads during that period, and just my, you know, weak memory here, is that it looked to be more of a feminine, if we can say that, as compared to a masculine imagery to it.

Q. So they wanted to get a masculine figure to depict their product; is that correct?

MR. MCDERMOTT: Objection to the form of the question.

MR. HOAG: Q. Is that correct?

A. I don't know. I mean, that's how it ended up. What their thought processes were and everything else, I'm not sure. My discussion back 30 years ago was simply that that was a particular visual that helped in their repositioning.

Q. Now, back in the 1950's, there were many television programs that featured cowboys, correct?

A. Yes.

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Q. And those programs were very popular with children, correct?

A. I think they were very popular with adults. I don't remember how popular they were with children, but I remember they were particularly popular with adults.

Q. What year were you born?

A. 1946.

Q. 1946? So you and I are fairly close in age, so we might have similar memory.

Do you remember watching programs like Bonanza when you were a kid?

A. Yes.

Q. Gunsmoke, did you watch that?

A. Some.

Q. Do you remember playing cowboys when you were a kid?

A. I grew up in Chicago. We didn't play a lot. We basically played war games.

Q. You played war in Chicago, not cowboys?

A. Correct.

MR. MCDERMOTT: Al Capone and the Purple Gang.

MR. HOAG: Oh, like the Untouchables.

THE WITNESS: Basically World War II.

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My dad was in World War II. I remember that being -- and of course the Korean War, so I remember an orientation that way. I may have had some cowboy paraphernalia. I don't remember being particularly involved with it.

MR. HOAG: Q. Do you remember on television, the stars on the cowboy shows like James Arness would advertise for cigarettes on TV?

A. No, I don't know that.

Q. Do you know that happened?

A. I don't remember.

Q. Do you remember the program The Flintstones?

A. Yes.

Q. Did you watch it as a kid?

A. I don't remember -- I remember it primarily being an adult sort of comedy. I don't remember watching it a lot.

Q. You didn't watch The Flintstones at all when you were a kid?

A. I had seen it, but it was not a particular favorite show for me.

Q. It was a cartoon character, right?

A. Yes.

Q. He smoked Winstons, do you remember

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that?

A. No.

Q. You don't remember Fred Flintstone ads where Fred Flintstone said, "Winstons taste good like a cigarette should," you don't remember that?

A. I heard comments from some individuals like that, but I don't remember it, no.

Q. Have you ever done any research of the imaginary depicted on television in the 1950's?

A. No.

Q. Sixties?

A. No.

Q. How about the 1970's?

MR. MCDERMOTT: Objection.

MR. HOAG: Did you say yes?

MR. MCDERMOTT: Cigarettes?

MR. HOAG: Yes.

MR. MCDERMOTT: Objection to the form of the question, assumes facts not in evidence.

MR. HOAG: Q. Did you say yes in the 1970's?

A. Well, at the FTC, I reviewed ads in the seventies, if I was there in '79.

MR. MCDERMOTT: Cigarette ads?

MR. HOAG: Q. Broadcast ads?

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A. No.

Q. Right now I'm talking about television or radio broadcast ads?

A. No.

Q. You never reviewed television or broadcast ads as it related to the sale of cigarette products, correct?

A. That's correct.

Q. Or the influence that those ads may have on consumers of all ages, correct?

MR. MCDERMOTT: Objection, John, we have one of those phone problems, and Dr. Mizerski didn't quite get an answer finished.

MR. HOAG: Okay, I'm sorry.

THE WITNESS: Although I didn't do primary research at that time, the impact of the ban of broadcast ads is certainly an area in which I have done research, and in -- certainly under the area in which I was asked to comment at the Federal Trade Commission.

MR. HOAG: Q. So you are aware that the ban on broadcast ads did result in a decrease in the number of smokers; is that correct?

MR. MCDERMOTT: Object to the form of the question.

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THE WITNESS: No, that's not the data that I see. As a matter of fact, it appears that it did not have much of an impact, certainly not a significant impact.

MR. HOAG: Q. When was the ban in effect on broadcast and -- TV and radio ads?

A. 1971.

Q. 1971? And between 1971 and 1982, did the number of people smoking decrease?

A. They did, but it was not associated with the ban.

Q. What was the percentage increase between 197 -- decrease in smoking between 1971 and 1982?

A. I don't know that right offhand.

Q. But you know it was a significant decrease in that period of time; is that correct?

A. Yes, there was a significant decrease but what I'm saying here is that research of individuals who have looked at that, that I can recall, suggested that it was not the impact of the ban.

Q. Are you one of the people that has looked at that?

A. I have looked at it. I have not specifically evaluated econometrically that

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material, but others have.

Q. So you haven't done any research on that, correct?

A. Sir, I have looked at it in terms of secondary research, yes.

Q. You have looked at other people's research; is that correct?

A. That's correct.

Q. You haven't done any of your own research?

A. I have not done primary research on it.

Q. In the 1950's, cigarette smoking did not decrease, did it?

A. Well, I don't know if I can actually recall data that looked all the way through the 50's. I have looked at data worldwide, and indeed there was a drop, but I couldn't say specifically whether I could say it significantly dropped in the U.S. There would be ups and downs depending on the year you're talking about.

Q. Well, there was a certain year when it was the consensus of the scientific community that lung cancer was caused by smoking and that occurred in the 1950's, correct?

MR. MCDERMOTT: Object to the form of

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the question.

THE WITNESS: I believe there was a Sloane-Kettering report in 1953. There may have been a slight drop then. 1964 would be the Surgeon General's report, and there was a drop after that.

MR. HOAG: Q. When there was a drop in 1953 -- let's go back to the Sloane-Kettering report. This report you're referring to stated that there was -- that lung cancer was, in fact, caused by cigarette smoking, correct?

MR. MCDERMOTT: Object to the form of the question, misstates evidence.

THE WITNESS: No, it didn't say that. As I remember, these were the mouse studies, mouse pad studies in '53 -- I could be wrong, but that's the best of my recollection -- at that point, making an association between, possibly, between smoking and some forms of cancer.

MR. HOAG: Q. You're talking about where they would put the tar from cigarettes on to the mice and they would get cancerous tumors, correct?

A. That's correct.

Q. And also there were epidemiological studies that established the fact that cigarette

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smoking was a cause of lung cancer, correct?

MR. MCDERMOTT: Object to the form of the question.

THE WITNESS: I don't know that specifically. There was, as I have read, information concerning the health effects of smoking in the 50's and the 40's. As a matter of fact, even earlier than that.

MR. HOAG: Q. During all of those times, the cigarette industry was denying the validity of the research, isn't that correct?

MR. MCDERMOTT: Object to the form of the question, argumentative, no foundation.

MR. HOAG: Q. Isn't that correct?

A. Well, the only response I could give is what I have heard secondhand. I don't remember specifically if I ever read that. I've heard those charges. That's about all I can say. I've seen media reports on it.

Q. Have you done any research at all to find out whether or not the tobacco industry systematically denied the health effects of tobacco smoke from the 1950's forward?

A. Well, I have -- as I said, I've read media accounts, read articles concerning that,

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reports of it, but I have not gone back to look at that time specifically.

Q. Are you familiar with the Frank Statement?

A. Yes.

Q. What's that?

A. As I remember it, they were either ads -- an ad or ads -- concerning discussions of smoking.

Q. But do you recollect, in the Frank Statement, the tobacco industry said that the health of the consumers was its overriding concern, do you remember that?

A. I remember the ads, I remember seeing the ads. I really -- unless I have the ad in front of me, I hate to base anything on my memory. I don't remember that specifically.

Q. Do you recollect that in the Frank Statement, the tobacco industry said there was not yet sufficient evidence to show that cigarette smoking caused any disease, do you recollect that?

MR. MCDERMOTT: Object to the form of the question, the ad speaks for itself.

MR. HOAG: Q. Do you recollect that?

A. As I said, I don't remember the

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specifics of the ad. I saw the ad quite some time ago, and I don't remember the specifics.

Q. Assuming the ad did say that, would that, in your opinion, be deceptive?

MR. MCDERMOTT: Object to the form of the question, no foundation.

THE WITNESS: I would have to see the ad. I have never, I think, made a determination of the section without reading the advertisements and reading the copy.

MR. HOAG: Q. Assuming the advertisements says there's not sufficient evidence to establish that cigarette smoking causes any disease, would that be deceptive?

A. In terms of when?

MR. MCDERMOTT: I object to the form of the question, calls for speculation. There's no foundation.

MR. HOAG: Q. Would that be deceptive in 1954?

MR. MCDERMOTT: Objection, no foundation.

MR. HOAG: You can answer.

THE WITNESS: I don't know what the health information in 1954 would be. As I said, to

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the best of my recollection, there was a Sloane-Kettering report, and that was about tumors on mice, and I don't know how one would interpret that particular data, whether one would say that conclusively showed you were going to get lung cancer. I guess I would have to put myself back into the information at that time. So I really don't know what I could say on that.

MR. HOAG: Q. Well, assuming that the cigarette industry, the tobacco industry, to this day, denies or states that there was not sufficient evidence to establish that cigarette smoking causes any disease, assuming that that is what the cigarette industry says today --

A. You're making a hypothetical?

Q. Yes, hypothetical, would that in fact be deceptive for the cigarette industry to provide that information to the American public?

MR. MCDERMOTT: I object to the form of the question, calls for speculation, and there's no foundation.

MR. HOAG: Q. You can answer that.

A. Well, if they put it in an ad. We're talking about advertisements. My area is in the area of marketing, not discussions on one individual

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or discussion of an individual. I guess if it boldly said there were no health effects of cigarettes, I would say it's deceptive.

Q. What about insufficient evidence that smoking cigarettes causes any kind of disease?

MR. MCDERMOTT: Object to the form of the question, no foundation.

MR. HOAG: Q. Would that be deceptive if stated now, today? What's your answer?

A. Let's say that would be deceptive if stated today, no health effects whatsoever.

Q. And that would be deceptive, because it has been established that cigarette smoking does have health effects, correct?

MR. MCDERMOTT: Object to the form of the question, no foundation, calls for speculation. Go ahead.

MR. HOAG: Q. Is that correct?

A. Maybe you can read that again.

(Record read.)

THE WITNESS: It has --

MR. MCDERMOTT: Objection.

THE WITNESS: It did have some health effects. I said earlier in my work at the FTC and since, I have seen research that suggests that it is

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causally tied into some forms of lung cancer.

MR. HOAG: Q. So saying today that it has not been established that cigarette smoking causes any disease would be deceptive, correct?

MR. MCDERMOTT: Object to the form of the question. You're misstating prior testimony. The witness has made a distinction between advertisements and statements, which your question does not.

MR. HOAG: Q. Is that correct?

A. If you're talking about advertising, that would be correct.

Q. Now, what is your definition of advertising?

A. Advertisement is a paid placement in some media.

Q. Is that your complete definition of advertisements?

A. Normally, an additional part would be it's an identified sponsor.

Q. A paid placement in some media?

A. That's the message that would be paid for and placed in some media.

Q. If you send a letter to a public school, and you say in that letter, "Please let the kids in

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your school know that it hasn't been established that cigarette smoking causes any disease," would that be deceptive?

MR. MCDERMOTT: Object to the form of the question, no foundation.

MR. HOAG: Q. You can answer.

A. It wouldn't be advertising. I presume we still have free speech, so individuals can say what they want, but that would not be considered advertising.

Q. Would it be deceptive?

MR. MCDERMOTT: Object to the form of the question, calls for speculation, no foundation.

THE WITNESS: I can only speak to the form in advertising. Again, people are free in this country to say whatever they'd like, and my expertise is in the area of marketing, and that would not be advertising.

MR. HOAG: Q. Are you saying marketing is not advertising?

A. I didn't consider that a form of marketing. You said a letter, someone sent a letter. I didn't say that was tied into any marketing.

Q. If the letter was from the public

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relations department of a cigarette company, would that change your opinion in any way?

A. Well, it would be depending on -- I don't know. That's sort of a gray area, whether public relations would be in marketing. If it was part of a marketing plan, presumably it could be.

Q. Is it possible for unpaid statements by the tobacco industry to be deceptive, in your opinion?

MR. MCDERMOTT: Object to the form of the question, overbroad.

THE WITNESS: Yes. I said -- I specifically am in the area of advertising and promotion, so statements by individuals are individual statements. I don't think -- I would not consider that as a marketing statement.

MR. HOAG: Q. Well, that wasn't my question. In your opinion, is it possible for a statement, an unpaid statement made by a representative of the tobacco industry, to be deceptive?

MR. MCDERMOTT: Object to the form of the question.

THE WITNESS: Well, what I used to set was specifically in terms of commercial terms. So I

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think it would be improper to call it deceptive. I think it would be an inaccurate statement. And I don't know, you know, what was going through the individual's mind, whether they -- I can't believe that people wouldn't have that information at this point.

MR. HOAG: Q. How much does the tobacco industry spend per year -- we can start in the last five years, if you know -- for advertising in the United States?

A. You know, I don't remember the specific figure. I know it was in the Federal Trade Commission web site recently, and I seem to remember a total promotion expenditure in maybe 1994, I think, of about 4.6 billion, or something in that area.

Q. Do you make any distinction between promotion and advertising?

A. We would look at a difference between promotion and advertising. Normally, we'll call it sales promotion, as compared to advertising.

Q. What's the difference between promotion and advertising?

A. Well, advertising, as I noted before, would be a paid, identified, usually, message, put

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out in a medium or media. Sales promotion could be a broad range, and generally in tobacco, the advertising would be sort of a longer term, hopefully longer term, where fortunately it now has short effects, if any. Sales promotion, on the other hand, would be dealing with a short run, brand switching techniques, specifically areas dealing with consumers, but largely dealing with the trade.

Q. I want to go back to what we were talking about a little while ago, about the banning of broadcast ads, and you said you recollected that began in 1971.

Now, is it your opinion that the banning of broadcast ads had no impact on the number of people who smoke in the United States?

A. That would only be my opinion after reading articles concerning the impact. It had no unique impact on the trend of individuals smoking in the U.S.

Q. What was the trend of smoking in the 1960s?

A. In 1964 there was a downtick in smoking incidents.

Q. After the Surgeon General's report was issued?

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A. That's correct.

Q. And you said a downtick. What do you mean a downtick?

A. In the sense there was an immediate drop in the incidents of the smoking.

Q. Then what happened, did it keep going lower, or did it level off or get higher again?

A. I really haven't seen specific figures tracing that. It would kind of depend on how you looked at the data, and sort of the trend downwards would be starting in probably the seventies.

Q. So there wasn't really a trend downwards, an ultimate consistent trend downwards concerning the number of smokers as a result of the Surgeon General's report issued in 1964, correct?

A. Well, these trends are affected by social factors and wars and changes in perceptions and a great number of other things, and I think it is -- it would depend on which group you're talking about, what area of the country you're talking about. As a matter of fact, I remember some research looking at some disadoption, or quitting behavior, in the seventies.

Q. So the answer to the question on -- that I asked about no trend towards fewer smokers in the

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1960's following the Surgeon General's report of '64, your answer is there was no trend decreasing the number of smokers, correct?

MR. MCDERMOTT: Object to the form of the question, you're misstating his testimony.

THE WITNESS: There was a movement downward. I don't think I have seen enough data as of this moment to show or discuss, really, what the trend would be, to know there is information concerning the seventies of a trend downward. At this moment, I'm not sure, between probably a couple of years after '64 and into the 70's, what the direction of the trend would be, and how stable it was.

MR. MCDERMOTT: John, why don't you try to find a place in the next few minutes where it's logical to take a break.

MR. HOAG: Okay. We can do that now. How much time?

MR. MCDERMOTT: Five minutes would be fine.

MR. HOAG: Okay.

(Brief recess.)

MR. MCCONNELL: I've tried to join in whenever I could in the objections that Mr.

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McDermott lodged. I have some concern, because of the phone frailties, that I was not included. Can I have a stipulation that I automatically join in on the objections, so I don't have to worry about this?

MR. HOAG: Yes.

MR. MCCONNELL: Thank you.

MR. HOAG: Q. You are based in Australia now; is that correct?

A. Correct.

Q. Okay. How long have you been there?

A. I've been there since September 22nd of 1995.

Q. Where were you prior to that, prior to Australia?

A. I was at Florida State University from approximately 1981 until September of 198 -- or 1995, and -- do you want previous to that or --

Q. No, that's fine for now.

Why did you move over to Australia?

A. My wife is also an academic and worked at Auburn, and it was difficult commuting back and forth every week. We wanted to have a family, and I was also provided a very nice offer, and it looked like a very nice life-style.

Q. You were talking about work you did on

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warning labels when you worked for the FTC. What particular warning labels did you work on?

A. I worked on the whole concept of rotating warning labels, what should be in the warning labels, how should they be stated, what format should they be in, how did individuals respond to it, to what extent did they comprehend and find it interesting and useful, perhaps, a broad range of rotating labels.

Q. What year did the rotating labels begin?

A. 1984, I believe.

Q. And the first warning labels were placed on cigarettes in what year?

A. I think 1965. I'm not sure.

Q. And from 1965 to 1984, were the warning labels changed in any way?

A. There was a Surgeon General's warning, and I believe it was '84 when they were changed. I think there was a change in the seventies. I'm not sure about that. I do remember working with warning labels, something to the effect that the Surgeon General has determined cigarette smoking can be hazardous to your health.

Q. Did you do any research in the effectiveness of a given warning label?

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A. Yes.

Q. What research did you do?

A. Well, I did focus groups.

Q. Right, you told me about the focus groups, which are individuals who you speak to and you get transcriptions and you did reports on that.

What conclusions did you reach as a result of the focus groups?

A. Well --

MR. MCDERMOTT: Object to the question. On what issue?

MR. HOAG: Warning labels.

THE WITNESS: Well, these dealt with not only warning labels, but their understanding of the health effects, their reaction to the printed warning label, also, mock-ups of potential warning labels, tried to get some understanding of how people would talk about it, or respond to them, to develop later some qualitative measures that could be used.

MR. HOAG: Q. Were any of the people in the focus group under 18?

A. Yes.

Q. What was the lowest -- what was the range of ages?

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A. To the best of my recollection, probably 11.

Q. So there were people in the focus groups between the ages of 11 and 18 and older, correct?

A. Yes.

Q. What percentage of the people in the focus group were under the age of 18?

A. I'm going to guess here about a third, perhaps.

Q. How was that decided, that a third of the people in the focus group would be under 18?

A. We wanted to get approximately a third under 18, a third between 18, 24, 25 and then some older consumers.

Q. Specifically, though, why was it decided there would be approximately one-third of the total number of the people in the focus groups between the ages of 11 and 18?

MR. MCDERMOTT: Why one-third as opposed to some other percentage?

MR. HOAG: Yes.

THE WITNESS: Well, that was discussion between the supplier, myself and the attorneys in the case.

MR. HOAG: Q. What case are you

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referring to?

A. Well, excuse me, the investigation.

Q. Was part of the investigation to look at the effects of warning labels on youth?

A. Well, it wouldn't be simply on youth, it would be on how people would use that information or understand that information, to what extent they didn't have information, and that would supply information they didn't have. So there was a broad range of questions. It wasn't ultimately on use.

Q. I said youth.

A. Youth?

Q. Youth, y-o-u-t-h. I thought you said "use." I said youth. Did you hear me when I said youth?

A. I misunderstood you, but now I understand. What was the impact on youth?

Q. Was that part of the investigation?

A. Impact is a pretty ambiguous term. Again, what we would be looking at is depending on what stage -- I mean, what information did they know about, what information did they not know about, to what extent could we provide them information that was understandable that they could use in terms of making a reasonable decision about

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smoking. I think that pretty much covers what I was looking at.

Q. Can one make a reasonable decision about smoking by looking at a billboard on a highway that depicts a cowboy riding on the range?

MR. MCDERMOTT: Object to the form of the question, no foundation.

THE WITNESS: Yes.

MR. HOAG: Q. You said yes?

A. Yes.

Q. How would one go about making a reasoned decision about smoking by looking at a billboard about a cowboy?

A. When people make a reasoned decision, that means they base it on past experience and environment. They put it all together depending on their lives and look at an ad. An ad realistically has -- depending on the individual you're talking about -- if it's a smoker, it would have one impact, if it's a nonsmoker, it would have no impact.

Q. A billboard depicting a cowboy riding on the range would have no impact on a nonsmoker?

A. Correct.

Q. What do you base that on?

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A. Research.

Q. What specific research says that nonsmoking youth viewing a billboard depicting a cowboy riding on the range would have no impact on those youth?

A. There's a broad range of research. I would look at studies that I did, I would look at studies that looked at bans of advertising, restrictions on advertising. So there's a broad range of data, both in the econometric form and experimental form, that would very clearly show that it would have no impact.

Q. You are aware of the fact that Marlboro spends more money on advertisements than any other cigarette brand, correct?

A. Yes.

Q. You are aware of the fact that Marlboro has the largest percentage of the youth market for cigarette preference, correct?

A. Youth market for cigarette preference?

Q. Right. The largest percentage of youth that smoke, they smoke Marlboro, correct? That's correct, right?

A. I want to make sure we're talking about the right semantics here. You're talking about

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self-reports about preference?

Q. Are you familiar with any other surveys that are other than self-reports of preference?

A. Yes, there are surveys that ask about liking, what does my friends -- there are probably as many different ways of asking questions as there are surveys.

Q. What is your understanding of the brand preference for those in the age group between 11 and 17, of those who smoke?

A. Well, if you're talking about stated self-report, stated preference, Marlboro would have a larger share.

Q. And that corresponds with the amount they spend on advertising, correct?

MR. MCDERMOTT: Object to the form of the question, assumes facts not in evidence.

THE WITNESS: Well, I would disagree. It corresponded, the causal relationship is probably the other way around. It's a complex relationship. And in fact, for many years we have realized it's usage that begets recognition, as opposed to the other way around.

MR. HOAG: Q. So you're saying, then, in your opinion, it isn't the billboard or the

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billboards depicting the cowboy riding on the range that attracts the youth to the Marlboro brand; is that correct?

A. That's correct.

Q. Does the billboard attract anyone to the Marlboro brand?

A. Smokers.

Q. So if you don't already smoke, that billboard is not going to attract you to the brand, correct?

A. Correct.

Q. Are there any advertisements, in your opinion, that attract people who don't smoke to the extent they decide to smoke a particular brand of cigarettes?

MR. MCDERMOTT: Object to the form of the question. I don't understand it.

MR. HOAG: Q. You can answer.

A. Well, you have some caveats there. For a nonsmoker, it's not going to have any impact.

Q. So is it your opinion that there are no cigarette advertising -- advertisements that have any impact whatsoever on a nonsmoker's decision to become a smoker; is that correct?

A. That's correct.

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Q. Are there any advertisements that have an impact, any advertisements of any kind, in your opinion, that have an impact on a consumer to try a product they have never tried before?

A. It would depend on the product and it would depend on the consumer.

Q. So is your answer yes?

A. My answer is it depends on the product, it depends on the consumer.

Q. My question was, were there any products, and you're saying yes, it depends on what product you're talking about?

A. Yes.

Q. What products, in your opinion, does an advertisement assist in inducing someone to purchase, who had not previously purchased a product?

A. Well, it would be talking about products that would be in the introductory stage of the product life cycle, and there it has a potential of getting people aware and providing the opportunity of gaining distribution.

Q. Now, to someone who was not born at the time a product was first initiated, or developed, there has to come a time for that individual that

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they first become aware of the product, correct?

A. Yes.

Q. And are those individuals ever aware of the product through advertising?

A. Well, if you're talking about a product that is beyond the introductory stage, would be aware that, as they grow up from other social ages -- I can't think of products that all of a sudden, in some later stage or period of youth, that they become aware of it.

Q. Let's use McDonald's as an example. A little child at some point becomes aware of the signs from McDonald's, correct?

A. Correct.

Q. Now, are any children influenced by McDonald's advertising, to the extent that they will desire to go to McDonald's as a result of the advertising?

A. Well, based on my review of the literature and my own research, it would suggest those individuals would be aware of McDonald's far before they would be aware of advertising, and they would be looking at various individuals in their family or friends who would talk about it, would be aware of the product category.

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Q. They would be aware of --

A. Before they saw the advertisements.

Q. Before they saw -- as they are sitting in a car, before they saw the McDonald's golden arches; is that right?

MR. MCDERMOTT: Object to the form of the question. You're changing the hypothetical here.

MR. HOAG: Q. I'm asking you; is that right?

A. Well, I was responding in terms of advertising.

Q. The golden arches that say McDonald's on them, is that a form of advertising?

A. No.

Q. What do you call those?

A. The location.

Q. Have you ever heard of point of sale advertising?

A. Yes.

Q. What is that?

A. Point of sale advertising would normally be some advertisement that would be at the point of sale. In other words, it would be, if you're talking about McDonald's, it might be something that

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would be potentially in the window of McDonald's, or it would be inside of McDonald's, point of sale.

Q. So the actual sign for McDonald's and the logo for McDonald's, that is not an advertisement?

A. That is not an advertisement.

Q. In your opinion, correct?

A. Yes.

Q. Is that, in any way, a reason that a child would be attracted to McDonald's?

MR. MCDERMOTT: Object to the form of the question.

THE WITNESS: I wouldn't think that would have an impact on the child. It would be more in terms of their initiation with a parent or a friend or a discussion with parents, or caretakers.

MR. HOAG: Q. So even if there are -- let's say, for example, on the Marlboro man billboard, even if there is a very large billboard depicting a cowboy on the range on every block in America, it's your opinion that that would have no impact on a child's decision on whether or not to smoke a Marlboro cigarette; is that correct?

MR. MCDERMOTT: Object to the form of the question.

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THE WITNESS: That's correct.

MR. HOAG: Q. Are you familiar with the Joe Camel ads?

A. Yes.

Q. Do those ads appeal to children?

A. No.

Q. Do any cigarette ads appeal to children?

A. Appeal? You're talking about in my vernacular, that would mean that they are -- well, why don't you tell me what appeal means.

Q. What does it mean to you?

A. Well, I can understand several different interpretations. I would like to know what you are talking about.

Q. Do you have a definition for the word "appeal"?

A. No. Normally, when I use appeal, it is something that -- this would be a creative appeal. That's what we would call it, a creative appeal, and that would be aimed at a particular market.

Appeal in a layman's language could mean that individuals like it. Appeal in a very broad layman's language could be that people respond to it.

Q. Are any cigarette advertisements geared

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towards children?

A. Geared towards children? Could you define what that means?

Q. Adolescents? Let's just say adolescents between the ages of 11 and 18?

A. No. I want to know what you mean by the term "geared towards"?

Q. Do you have any understanding of the sentence I just stated?

A. This is a very important thing. I think we have to talk very specifically what your definition of "geared towards" is. Now, I think, you know, if you would like to tell me what geared towards is, I would be more than happy to respond to that, but I don't -- it's too broad of an interpretation of geared towards. It's not a term we would use typically in the advertising area.

Q. What term would you use in the advertising area?

MR. MCDERMOTT: For what purpose?

MR. HOAG: Q. Can you answer the question?

A. No. I mean, what do you mean? Are you talking about targeting?

Q. Okay. In your opinion, do any cigarette

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advertisements target youth?

A. No.

Q. Have you ever seen the Newport ads?

A. Yes, I remember some Newport ads.

Q. Have you seen the Newport ads that show a male person with a cowboy hat over his head and the cowboy hat doesn't fit, it goes halfway down his head, have you seen that ad, that billboard?

A. I don't have a specific recollection of that particular one, no.

Q. Have you seen any cigarette billboards that depict young people -- that depict attractive young people having a good time?

A. Could you be specific what young people means? Are you talking about adults, are you talking about youth, which would be under 18?

Q. Under the age of 25?

A. I don't remember any that portrayed people under the age of 25.

Q. Have you ever seen a cigarette advertising -- I'm talking specifically about a billboard -- where any of the people in the ad looked like they were 25 or under?

A. To be honest with you, I don't remember them looking like they were under 25. And I do

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think about that issue. So I don't remember any under 25, that I would perceive about as being under 25.

Q. When you say you think about it --

A. There is a trade policy concerning the use of models and ads, and I know there's some research looking into that issue.

Q. What is the research looking into that issue?

A. There has been an article looking at youth models and their perception of their age.

Q. So it is quite possible for a model to be 25 but to look under 25, correct?

MR. MCDERMOTT: Object to the form of the question.

MR. HOAG: Q. Correct?

A. Depends on the individual. You have to understand, I have been in the teaching field for 25 years, so I think I might be a little better in understanding the age of individuals. So what's possible, I don't know, but the research suggests that if it happens, it is at a very small level.

Q. Well, you are a college teacher, right?

A. Correct.

Q. Have you ever had any students over 25

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who looked under 25?

A. You know, I don't remember a specific incidence of that. I remember people who looked younger than 30, but I couldn't say under 25. I just don't remember going through that process, of looking at students and asking their age and being surprised.

Q. Now, you're saying that there have been studies done on models that are over 25 and whether they are perceived to look younger than 25; is that correct?

A. Correct.

Q. And these studies indicate that models that are over 25 are sometimes perceived to look younger than 25; is that correct?

A. There is one study that I'm aware of that showed a very small proportion of some of their sample perceived to be the age under 25. What's interesting is, I don't believe that that was ever tied into any further aspect about purchase or not.

Q. Are cigarette advertisements that depict individuals -- that depict healthy individuals having a good time as they smoke cigarettes, are those advertisements in any way deceptive, in your opinion?

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A. No.

Q. And why are they not deceptive?

A. There's a lot of healthy individuals smoking cigarettes.

Q. Now, the depiction of healthy, attractive, young individuals smoking cigarettes, is the purpose of that ad to have some impact on the decision-making process of the consumers who have viewed the ad?

MR. MCDERMOTT: Object to the form of the question, no foundation, calls for speculation.

MR. HOAG: Q. You can answer.

A. Could you repeat your question?

MR. HOAG: Pardon?

(Record read.)

MR. MCDERMOTT: Same objection to the question as phrased.

THE WITNESS: Well, an ad would have an impact on the user, hopefully for the manufacturer, and that would be for brand switching. It would have no impact on initiation or continued use.

MR. HOAG: Q. Now, is there any intent in that ad to imply that people who smoke cigarettes are more or less likely to have a good time in a healthful setting?

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MR. MCDERMOTT: Object to the form of the question, no foundation, calls for speculation.

THE WITNESS: I'm sorry, there's a bit of a distraction.

(Record read.)

THE WITNESS: I really can't say yes or no, because I don't know what the intent is of the advertising. The great potential impact of the total ad would be to do brand switching and I -- that's all I can really say without looking at the ad.

MR. HOAG: Q. Now, you will agree that the tobacco industry, if it is to remain in existence as a tobacco selling industry, has to replace dying and quitting smokers with new smokers, correct?

MR. MCDERMOTT: Object to the form of the question.

THE WITNESS: They don't have to do anything. Those individuals will be there on their own volition, whether there's advertising or marketing or anything else. So that is a natural process.

MR. HOAG: Q. Is that true, in your opinion, for every product?

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A. Well, again, it would depend on the product, it would depend on the substitutes, product life-cycle, product categories. But tobacco would be no different, or cigarette tobacco would be no different than other consumer packaged goods.

Q. So it's your opinion that cigarette ads have zero impact on the decision of a nonsmoker to become a smoker; is that correct?

A. That's correct.

Q. And it's your opinion that the ban on broadcast ads had no effect on the number of people who became smokers during the time of the broadcast advertising ban in the United States; is that correct?

MR. MCDERMOTT: Object to the form of the question.

THE WITNESS: Well, that's a confusing one, because if you're saying the ban had no impact on getting people to smoke, you know, it had no impact on smoking behavior. Would that satisfy?

MR. HOAG: Q. Okay. When you say it had no impact on smoking behavior, does that include no impact on a person's decision to become a smoker in the first place?

A. That's correct.

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Q. Specifically with reference to the Joe Camel ads, what is depicted in the Joe Camel billboards, if you know?

MR. MCDERMOTT: Object to the form of the question, overbroad.

THE WITNESS: I didn't really hear all the question.

MR. HOAG: Q. The thrust of it is, what is depicted in the Joe Camel billboard, if you know?

MR. MCDERMOTT: Object to the form of the question, overbroad.

THE WITNESS: There are all kinds of billboards. What is depicted depends on the illustration.

MR. HOAG: Q. Is the Joe Camel cartoon character depicted to be cool?

A. He's a cartoon character and that presumably could be one adjective one would put towards it.

Q. And the Joe Camel ad is targeted to adolescents, correct?

A. Incorrect.

MR. MCDERMOTT: Object to the form the question.

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THE WITNESS: I don't agree.

MR. HOAG: Q. Since the Joe Camel ads were -- have begun, the Camel market share among adolescents has increased by a factor of at least four, correct?

MR. MCDERMOTT: Object to the form of the question.

THE WITNESS: No, that's incorrect.

MR. HOAG: Q. Why do you say that's incorrect --

A. That's not what the research can back up and show.

Q. What does the research back up and show as far as the market share among adolescents for Camels since the inception of the Joe Camel campaign ad?

A. Market share, depending on how you look at it and ask the question, has varied, but I believe the last information I saw was somewhere in the area of about three percent.

Q. When you say three percent, what do you mean, three percent of what?

A. Of underage smokers.

Q. Three percent of all underage smokers smoke Camels now; is that correct?

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A. Correct.

Q. On what do you base that on?

A. I believe there's a recent Audit & Surveys study that looked at that issue.

Q. Who looked at that audit and surveys?

A. Audits & Surveys.

Q. Pardon me?

A. Audits & Surveys, the company.

Q. Oh, it's called Audits & Surveys?

A. Correct.

Q. When was this published?

A. I saw it in the newspaper and I saw it on the web site. I believe it was sometime in '97.

Q. What web site did you see it on?

A. Well, there were a number of them. It was on Point Cast, it was reported by a number of news organizations.

Q. Was this organization you referred to as Audits & Surveys paid to do its survey by anyone or any organization?

A. Yes, it was paid by RJ Reynolds.

Q. RJ Reynolds, of course, is the manufacturer of the Camel cigarettes, correct?

A. Correct.

Q. And this audit result directly

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contradicts all of the published information about the market share among youth for the Camel cigarettes, correct?

A. Incorrect.

Q. Did you participate in any way in the development of the survey?

A. No.

Q. How much was RJ -- how much did RJR pay for this survey?

A. I don't know.

Q. Would RJR have published a survey if it didn't provide a result that they liked?

MR. MCDERMOTT: Object to the form of the question, no foundation.

THE WITNESS: Are you talking about any survey?

MR. HOAG: Q. This survey we're talking about?

A. I don't know. You would have to ask RJR about that.

Q. Have you read any published accounts that the market share was closer to 12 percent of the youth market for Camels rather than three percent?

A. I've seen one totally flawed study, yes.

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Q. Now, the study that was done by the RJR contract -- the company that RJR contracted with, have you reviewed that study?

A. Yes. I just said I saw it reported. I haven't reviewed it yet.

Q. So you don't know whether there's any flaws in that study or not?

A. Not as of yet.

Q. Has anyone asked you to review it?

A. No.

Q. What were the flaws in the study, published study you saw that indicated the market shares for Camels among youth was 12 percent or more?

A. I actually critiqued that study and it has been published. I don't remember if it was DeFranza or Pierce. I think it was DeFranza, in a 1991 Journal of the American Medical Association, who conducted basically an experiment in which he exposed some individuals to a series of six, seven or eight Camel ads, and then asked them their favorite ad, and then extrapolated, what we would call a severe demand artifact, extrapolated to what their share would be. It's a totally incorrect form --

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Q. You said, in your opinion, it was a totally incorrect form and analysis?

A. That's correct.

Q. When did you say you critiqued this study, in 1991?

A. 1992. It came out in December of 1991.

Q. Did anyone ask you to prepare this critique?

A. Yes. Part of it was I was asked to critique a number of studies.

Q. And who asked you to critique the studies?

A. RJ Reynolds.

Q. Did they pay you for your critique?

A. They paid me for my critique, but not for my further publication and presentation of the results.

Q. Did you have a written contract to do this?

A. No.

Q. How many hours did you spend at the request of RJR to prepare this critique?

A. I don't remember right offhand.

Q. How much were you paid per hour to prepare the critique?

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A. I don't remember the exact figure. It would be either $150 or $175.

Q. Per hour?

A. Yes.

Q. Did you spend more than 100 hours preparing the critique?

A. No.

Q. Did you spend more than 50 hours preparing the critique?

A. Yes.

Q. Did you spend more than 75 hours preparing the critique?

A. It would be between 50 and 100 hours. I don't know, somewhere in that area.

Q. So RJR paid you between $7,500, $10,000 to critique this study; is that correct?

A. I think it was a bit more than that. No. Not for that study. There was a whole broad range of study. But for that study, it would be less than 10,000. Less than $7,500.

Q. What was the nature of your critique? By that, did you prepare some written summary to RJR?

A. I don't remember the specifics. I remember discussing it orally.

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Q. You discussed it orally with them before you prepared it for publication; is that correct?

A. Yes.

Q. And what was your oral discussion with RJR, what -- how did you summarize your results when you discussed this with RJR?

A. I don't remember. It was on a number of different studies, and I don't remember exactly what I said about that particular study. My later publication, I added more analysis to it and other viewpoints and other data.

Q. But a large part of the data collection was paid for, large part of the research time was paid for by RJR; is that correct?

A. For my later publication?

Q. Yes.

A. No.

Q. Did you use any of the information that you collected in the research you did for RJR to prepare the later publication?

A. Yes.

Q. Did you disclose that in the publication?

A. I think I did, yes.

Q. You're not sure?

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A. I disclosed information. Yes, I believe I did.

Q. Is that appropriate to do, to disclose the funding source for research?

A. It would depend on how it is funded. I often will publish data that I worked with with a client. In fact, I just presented two papers, based on a different client, data that was made available as sort of a by-product of doing consulting and did not provide identity or note that it was funded. That's -- typically, one often has a by-product of a consultation, and we use that in further publication. If something is specifically funded for a data set, that would be different.

In this particular case, as I said, that there is just sort of the issue, it very superficially was reviewed and later I became quite interested, and with some coauthors published a critique of it and a couple of other studies.

Q. Did RJR encourage you to publish your critique in some form?

A. No.

Q. Did they ask you if you were going to publish it?

A. No.

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Q. Did you tell them you were going to publish it?

A. Yes. When did I -- I don't have a particular date, but it would be probably after it was accepted.

Q. Did anyone at RJR, anyone representing RJR, review any of the critique prior to publication?

A. No.

Q. Did any attorney at RJR or representing RJR become aware of the fact you were going to publish this information prior to publication?

A. Yes. After it was accepted, I alerted them to the fact I was going to be publishing it and sent them probably a copy of the paper.

Q. How many other publications of yours are based, at least in part, on research that you did that was paid for by a tobacco company?

A. One.

Q. What's the other one?

A. It was a Journal of Marketing article that did a replication and extension of an article that appeared in the Journal of the American Medical Association, and that appeared in the Journal of Marketing, I believe, in October of 1995.

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Q. And the research that you did that was paid for by a tobacco company, what tobacco company paid for it?

A. Well, they funded me to collect the data and that was RJ Reynolds.

Q. Did you provide them with the results of your data prior to publishing the data?

A. Well, they were aware of the data. I don't think until I thought it was interesting enough, I said I would like to publish it, it wasn't like that.

Q. Did you have to ask them permission to publish it?

A. No, it was my data.

Q. What data did they ask you to collect the resulted in a published article in 1995?

A. They asked me to sort of check on the accuracy of a particular article that was published in the Journal of the American Medical Association. I then developed a replication and an extension. They funded the data. It was totally under my control, my responsibility, and it was my data. It was my determination to publish it if I wanted, in any form I wanted.

Q. Now, if your research would have

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verified the accuracy of the prior publication, would you still have published it?

A. Yes.

Q. Would RJR still have continued to fund you?

A. Well, they only funded me for the study. They didn't fund me to publish it, work on it, do anything else. It was simply to, as I understand from them, to find out whether it was accurate or not. Additional funding beyond that for me to publish or not publish --

Q. If you published information that was not useful for RJR, would they still use you as an expert witness?

MR. MCDERMOTT: Object to the form of the question.

THE WITNESS: I think you have to ask them. I don't know what goes through their heads. I never asked that question.

MR. HOAG: Q. Do you have an opinion whether or not you would be used today as an expert witness if you produced data that was not useful for RJR?

MR. MCDERMOTT: Objection.

THE WITNESS: I don't know. I know

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quite a lot about the tobacco area, and it's quite conceivable they may.

MR. HOAG: Q. Do you have any opinion that is not useful to RJR that you can think of?

MR. MCDERMOTT: Are you referring to opinions on advertising and promotion, opinions on health effect?

MR. HOAG: Q. With reference to advertising and promotion, that's your area of expertise, right?

A. I never received any feedback from anyone that either represented RJR, or RJR, as to whether any of my opinions were unhelpful or not.

Q. Have you always charged $150 to $175 per hour?

A. I've charged less and I've charged more.

Q. What do you charge now?

A. $250.

Q. $250? How long have you charged $250 per hour?

A. I don't know, maybe for about a year, I'd say.

Q. Now, you said you were first contacted about working on the Engle case in approximately December of 1996; is that correct?

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MR. MCDERMOTT: Object, that's not correct.

MR. HOAG: Q. Is this the witness?

MR. MCDERMOTT: No, it's McDermott.

MR. HOAG: He can tell me it's not correct.

MR. MCDERMOTT: You're misstating prior testimony.

MR. HOAG: Q. Is that correct, sir?

A. That I was contacted?

Q. First contacted to be an expert in the Engle case? In approximately 1996, isn't that correct?

A. Yes.

Q. When were you first contacted in the Engle case?

A. I think I mentioned either one or two months ago.

Q. And you didn't recollect who contacted you, correct?

A. No, I don't. For the Engle case?

Q. Right.

A. I would be speculating. I'm not sure.

Q. Do you know what the Engle case is about?

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A. Yes.

Q. What's it about?

A. Well, there are a number of aspects in the complaint. It appears to be largely based on the impact of advertising and the addictive quality of cigarettes.

Q. Are cigarettes addictive?

A. No.

Q. Have you ever known anyone who quit smoking?

A. Yes.

Q. Have you ever known anyone that had any trouble quitting?

A. Yes.

Q. Are cigarettes a drug -- is nicotine a drug, let me put it that way?

MR. MCDERMOTT: Object, no foundation.

THE WITNESS: Nicotine is a drug.

MR. HOAG: Q. Is it pharmacological active, if you know?

A. It's a very weak pharmacologically action, yes.

Q. Does it have physiological effects on people?

A. Yes.

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Q. Have you ever smoked?

A. Yes.

Q. Do you smoke now?

A. No.

Q. How long did you smoke cigarettes?

A. Maybe ten years.

Q. How many packs or cigarettes a day did you smoke?

A. Probably a pack a day at my peak.

Q. And how old were you when you quit?

A. The first time I quit would probably be when I was in my late twenties.

Q. So you quit when you were in your late twenties and you smoked again after that?

A. For a short period, very short period, for perhaps six months.

Q. How old were you when you first started to smoke cigarettes?

A. What do you mean, when I first started, are you talking about experimentation, regular use?

Q. Let's start when you first started your first cigarette?

A. I don't remember how old I was.

Q. How old were you when you first started to smoke regularly?

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A. I remember, and I can't say this would be the first time, but I do remember regularly smoking as a freshman in college.

Q. How old were you?

A. 18.

Q. Prior to the time that you were 18, had you smoked at all?

A. I had smoked, but I don't know if I would say one a day for the last 30 days or some other measure of regularity.

Q. What brand did you smoke?

A. A number of different brands, but primarily I smoked Kent cigarettes.

Q. When you quit for the first time when you were in your twenties, why did you smoke?

A. It no longer was really important to me.

Q. Did you have any trouble quitting?

A. No.

Q. Did health effects have any reason -- were health effects any of the reasons for your quitting the first time?

A. Well, I imagine that I had an awareness of the health effects. I had let myself -- I would sort of get out of shape and I went through a routine of getting back into running and some other

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activities, and smoking no longer seemed relevant to that life-style.

Q. A few months later you started to smoke again?

A. No, probably 14 years later.

Q. 14 years later? And how old were you when you first started to smoke again?

A. 40 years old, 41.

Q. Why did you start to smoke again?

A. I'm not sure.

Q. How long did you continue to smoke when you started again at 41?

A. Perhaps about six months.

Q. How much were you smoking? Were you smoking a pack a day by the time you quit?

A. I don't remember.

Q. What brand were you smoking at that time?

A. I don't remember. A number of different brands, as I remember it.

Q. Why did you smoke after six months?

A. Once again, just wasn't relevant to my life-style. I just didn't feel it was enjoyable.

Q. Have you ever known anyone who tried to quit smoking that was unable to?

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A. Well, I guess it would depend on what you mean by tried, but I know individuals who have said they tried and have continued to smoke.

Q. Have you ever known anyone who contracted lung cancer who was a smoker?

A. I don't -- I don't personally remember anyone.

Q. Have you ever known anyone who had any disease that was attributable to cigarette smoking?

A. Yes.

Q. What disease was attributable to cigarette smoking?

A. Emphysema.

Q. Was that person still a smoker at the time they contracted emphysema?

A. Still smoking when they had emphysema?

Q. Still smoking at the time they were diagnosed with emphysema?

A. You know, I don't know, but I don't remember the relationship. I don't believe they continued to smoke after learning about that. But that would be speculation. I don't remember specifically.

Q. Was the emphysema caused by the cigarette smoking?

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MR. MCDERMOTT: Object to the form of the questions, no foundation.

THE WITNESS: You know, it was suggested to be a cause of cigarette smoking.

MR. HOAG: Q. How much did that person smoke?

A. I don't remember.

Q. Do you know for sure whether that person stopped smoking after being diagnosed with emphysema?

A. You know, I really couldn't give you a specific. I guess what I'm recalling is an incident. I don't remember particularly who the individual was. I don't remember them smoking after contracting -- I'm sure you don't automatically get emphysema, it's sort of a gradual process, and I don't remember those people smoking after that, you know.

Q. When you say those people, was it more than one person?

A. Yes, I remember a couple of individuals.

Q. Now, you are aware most people start to smoke prior to the age of 18; is that correct?

MR. MCDERMOTT: Object to the form of the question.

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THE WITNESS: Well, what do you mean by begin to smoke?

MR. HOAG: Q. Become smokers prior to the age of 18.

MR. MCDERMOTT: Object to the form of the question.

THE WITNESS: If you're talking about experimentation and initiation, and if you're talking about those two, I would say that there appears to be evidence that individuals primarily do it before the age of 18. Regular smoking, in the sense of one a day for the last 30 days, happens around the age of 18 and beyond.

MR. HOAG: Q. So it's your opinion that most people do not become regular smokers until after the age of 18; is that correct?

A. 18 and above.

Q. What is your definition of regular smoker?

A. One a day for the last 30 days or daily smoking.

Q. And what do you base that opinion on?

A. Surveys asking individuals.

Q. What surveys?

A. Broad range of surveys. There's some

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California studies, there are Michigan studies, there are studies in the U.K., you know, there are probably -- I couldn't name all of titles for you, but there are quite a few that looked into that particular one. Of course a definition of what a regular smoker is often varies by the kind of survey that's done.

Q. And you're defining it as one a day for 30 days or more?

A. Correct. At least one a day, 30 days, last 30 days.

Q. Are children who suffer from attention deficit disorder more likely to become smokers as children than other individuals?

MR. MCDERMOTT: I missed the first part of your question. Can you restate that?

MR. HOAG: Q. Are children who suffer from attention deficit disorder more likely to become smokers as children than other smokers?

A. I don't know.

Q. Do you know whether or not the cigarette industry has done any research on that topic?

A. I'm unaware of that.

Q. Are you aware whether hyperactive children are more likely to become regular smokers

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than other children?

A. I don't know.

Q. Do you know if the cigarette industry has done any research on that topic?

A. I'm unaware of that.

Q. Do you know whether or not the cigarette industry makes any attempt to target hyperactive children as potential cigarette smokers?

A. I'm unaware of them targeting youth at all.

Q. Have you reviewed any internal documents of cigarette companies?

A. Yes.

Q. Have you read any RJR documents concerning targeting of youth or marketing to the youth of America?

A. I have looked at documents and the documents that I have looked at and studied, I haven't seen that. In some depositions people have made hypotheticals or may have provided me documents that alleged to say that, and I have to take a look at those documents again to really respond to you.

But I don't remember anything that targeted and had a marketing plan and showed a company was actively going after the youth market.

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Q. When were you deposed in the Florida AG's case?

A. Early May of this year.

Q. Who conducted that deposition, who questioned you?

A. Mr. Yerrid.

Q. How long did that deposition last?

A. I believe a little over a day.

Q. So you're real fortunate. Ours isn't going to even come close to that. So it was a little over eight hours, correct?

A. To the best of my recollection, yes.

Q. Do you charge more for depositions than your normal hourly rate?

A. No.

Q. It's $250 per hour regardless?

A. Correct.

Q. Do you charge any more for actual court testimony?

A. No.

Q. And when were you deposed in the Mississippi's AG case?

A. I believe it was the 29th and 30th of April, of this year.

Q. Who did that deposition?

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A. Jennifer Coley.

Q. How long did that take?

A. A little over a day, about a day and a half.

Q. Have you reviewed the transcripts for both of those depositions?

A. Yes.

Q. Have you reviewed any documents in preparation for your expert testimony in the Engle case?

A. A complaint.

Q. Other than the complaint, have you reviewed anything else?

A. Not that I can remember, no.

Q. How much time have you spent, how many hours have you spent so far on the Engle case?

A. Well, I guess probably starting today when this deposition was to begin.

Q. So you haven't actually done any preparation specifically for the Engle case; is that correct?

A. Correct.

Q. Other than reading the complaint and doing this deposition today?

A. Specifically for Engle, no, I don't

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remember anything else. I also looked at the -- I don't know what you would call it, but the serving -- whatever, the deposition order or offer, whatever that was. I really don't remember much more than those two documents.

Q. Now, other than working as an expert witness on the Engle case, the Florida AG's case, the Mississippi case, and the work you did in the 1980's to prepare for congressional testimony, have you done any other work that's been paid for or has been done for tobacco companies?

MR. MCDERMOTT: Let me remind you, he has already described some data gathering he has done earlier in this decade which we have reviewed within the last hour.

MR. HOAG: Right.

Q. And in addition to that data gathering, adding all of those things in, is there any other work you have done for any other tobacco company?

A. Well, I figured everything was covered. I have spoken to some individuals in Australia, a law firm for potential work there.

Q. What tobacco company do they represent?

A. Phillip Morris.

MR. MCDERMOTT: For the, so the record

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is clear, let me state that Dr. Mizerski is going to be deposed tomorrow as well and on Monday in connection with two other cases.

MR. HOAG: Q. What are those other two cases, Doctor?

A. Well, tomorrow would be Mangini, which is the California case, and Monday would be the Texas AG case.

Q. Other that the Mangini case and the Texas AG case that you're going to be deposed on in the next day or two, are there any other cases that you have ever worked on for or about tobacco companies?

A. Not that I can recall.

Q. What is the Mangini case about?

A. I've just personally reviewed the complaint and it had -- it primarily, as I remember it, has to do with the alleged effect of the Joe Camel campaign on youth smoking.

Q. Has the amount of youth smoking increased since 1990?

A. It would depend on the survey you're talking about and the question you looked at. There most recently was a report it would increase in a survey done in California, but as I remember it

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there was a difference in the way the question was asked that accounts for that. I believe there was also a Michigan report, a question of risky behavior including cigarette smoking. Those are the two that I can report at the moment.

Q. Do you have an opinion as to whether or not the number of children smoking has increased in the United States in the 1990's?

A. Well, there have been changes from year to year, primarily going down. Overall, if you took a look from 1990 to now, whether they went down, I really haven't made that calculation, but there has been a down trend, except for the most recent years, in terms of youth smoking.

Q. Except for the most recent year?

A. Well, these surveys come out perhaps in this year, and they may have been done in previous year or years.

Q. When were you -- maybe I'm remembering that December '96 date for the AG cases.

Was December '96 the first time you were contacted to work on any of the AG cases?

A. Well, I'm -- that was the first time I was contacted. The exact application and whether I was going to be an expert witness, I don't remember

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it being determined at that date. That was simply a time that I spoke to attorneys specifically about issues that might be related to a broad range of cases and issues.

Q. Approximately how many hours have you spent working on the Florida Attorney General's case?

A. I don't know.

Q. Is it more than a hundred?

A. I don't know. I really haven't, in my mind, really separated out the different cases, or anywhere that I can remember.

Q. Are you working for the same tobacco company regardless of whether it's the Florida AG case or the Mississippi case or the Engle case -- is that correct?

A. Well, I'm working for a law firm that represents the tobacco company, yes, and the issues are very similar. So I presume until one determines what -- if, you know, it does go to trial, what exactly my role will be. I really don't think I can allocate it out specifically.

Q. Okay.

Cumulatively for all the tobacco-related cases that you have been working on since December

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of 1996, how many hours have you spent?

A. I don't remember, you know, the total hours.

Q. Is it more than 100?

A. Yes.

Q. Is it more than 200?

A. It may be, yes.

Q. Is it more than 300?

A. I don't know. That might be sort of in the ballpark.

Q. So it's over 100 and it might be as high as 300 hours so far; is that right?

A. Yes. I'm not sure of the exact number of hours, yes. But probably more towards 300.

Q. Have you been paid for all the time you have spent so far?

A. No.

Q. Are you paid on a monthly basis?

A. Typically, I guess, I'm paid sometime after I submit a bill.

Q. When was your last bill submitted?

A. Perhaps June sometime.

Q. So just estimating the amount of time you spent, you figure it's somewhere around 300 hours cumulatively to date, correct?

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A. I haven't calculated it. It would be somewhere around 300 hours. I don't know anything beyond that. I haven't totaled up the hours.

Q. Do you keep your billing records?

A. I just put in the hours and then my wife typically, you know, develops the billing. I don't personally total them up. I'm terrible with a calculator.

Q. What was your annual income last year personally for any work that you've done?

MR. MCDERMOTT: Let me object, at least to this extent, or at least instruct the witness. My understanding is that income related to this engagement is fair game. Other, more general, inquiries into the finances and income are not on the table.

I think the witness has some privacy interests, and I don't see how that's material to the litigation.

If you want to inquire as to the money he has received or expects to receive as a result of this, his participation or consulting for tobacco generally, that's fair game.

MR. HOAG: Okay.

Q. Are you then refusing to answer the

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question I asked about how much money you made, income you made last year?

A. Well, I made money last year as a professor and I also made money in terms of my consulting. I have been doing consulting probably since the seventies, and I could say that except for maybe two years, my consulting from other industries is substantially larger than anything I've gotten from tobacco.

Q. Is it substantially larger in 1997 than for other consulting work that you've done?

A. '97 would be one of the two years that it would be more for tobacco.

Q. And the other year would be?

A. I think '92.

Q. What was happening in '92?

A. That's when I was funded for the Joe Camel research that I did.

Q. What percentage of your consulting income was received from tobacco-related work in 1992?

A. Maybe a little over half, perhaps.

Q. Approximately how much money was that?

A. Of what, the total amount or tobacco?

Q. What was the total amount that you were

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paid for tobacco-related work in 1992?

A. 75, maybe, thousand.

Q. What's the total amount that you have been paid in 1997 so far for tobacco-related work?

A. Maybe in excess of 60. I don't know exactly so far.

Q. When you say 60, do you mean in excess of $60,000?

A. Possibly. I don't think I have broken out how much, you know, for my particular time, as compared to expenses and plane travel and that kind of thing. That's why it would be difficult for me to tell you exactly, but that would be my best guesstimate, something in the area of perhaps 60.

Q. You billed at $250 per hour for the entire year of 1997, correct?

A. Correct.

Q. And you haven't yet billed for this deposition or the two that you're going to do in the next few days, correct?

A. Correct.

Q. Now, the Texas AG depo that you're going to do, what day is that going to take place?

A. Next Monday.

Q. And the -- is it Mangini, is that what

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you said?

A. Mangini.

Q. The Mangini case, when is that depo supposed to take place?

A. Tomorrow and Friday.

Q. Is that a private action as opposed to a state or government action?

A. It might be -- you would have to ask the attorneys. I don't know.

Q. Tomorrow, where is that going to take place, the Mangini case?

MR. MCDERMOTT: The deposition will take place here in Washington.

MR. HOAG: Q. Is that a private action?

MR. MCDERMOTT: I'm not exactly sure how I would characterize it. It's like a little AG action, private plaintiffs purporting to act on behalf of the state.

MR. HOAG: Which state is it?

MR. MCDERMOTT: California. I meant FTC.

MR. HOAG: Federal Trade Commission?

MR. MCDERMOTT: Little FTC.

MR. HOAG: For California?

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MR. MCDERMOTT: Yes.

MR. HOAG: The Court Reporter wants to know, and this is the attorney speaking, the Court Reporter wants to know, did you say --

MR. MCDERMOTT: Private plaintiffs purporting to act on behalf of the state. You know, a little FTC action. And I'm not personally involved in that litigation. There might be some intervenors. It's a complicated action, but it has a private genesis. It is not the state that's prosecuting the action.

Let me ask you, John, do you have some estimate as to how much longer you're going to be going? If it's a short time, maybe we can finish up. If not, maybe we can take a five-minute break.

MR. HOAG: It's going to be a short time.

MR. MCDERMOTT: Why don't we press on then.

MR. HOAG: Okay.

MR. HOAG: I'm going to check over my notes and this will take me a minute or two and I'll come back on.

MR. MCDERMOTT: Okay. Fine.

(Brief recess.)

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MR. HOAG: Q. The congressional testimony that you provided, what year did you do that?

A. I believe it was 1988.

Q. Was there any period of time that you provided any congressional testimony related to the tobacco issues?

A. No.

Q. This was testimony that you provided on behalf of RJR; is that correct?

A. I worked with Wambol Carlisle, a law firm, if I recall. I'm not sure who they represented. It could have been RJR or a number of clients. I'm not sure.

Q. How much were you paid for that?

A. I don't remember. It was several days in Washington. I don't remember the number of hours.

Q. What was the nature of your testimony?

A. There were two appearances during that year. In one case, it had to do with potential legislation concerning international commerce and exporting cigarettes and warnings and labels that were associated with that and whether, if I remember it, domestic manufacturers should be able to send

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their projects to foreign markets and under what market conditions.

The second time, as I remember it, it dealt with potential legislation concerning packaging and advertising in the U.S.

Q. Okay. Other than the work you did in 1988 that you just discussed, and the other work that you previously testified about, have you done any other work that was paid for by any representative or company in the tobacco industry?

A. No.

MR. HOAG: I don't have any other questions. Thank you very much for your time. I'm assuming you're going to order a copy of the depo?

MR. MCDERMOTT: Yes.

THE REPORTER: Would you like a copy?

MR. MCCONNELL: Yes.

(The deposition proceedings were adjourned at 1:00 p.m.)

RICHARD W. MIZERSKI, Ph.D.

--oOo--

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State of California)
County of San Mateo)

I, KUMI TAIRA, hereby certify that the witness in the foregoing deposition was by me duly sworn to testify to the truth, the whole truth and nothing but the truth, in the within entitled cause; that said deposition was taken at the time and place herein named; that the deposition is a true record of the witness' testimony as reported to the best of my ability by me, a duly Certified Shorthand Reporter and disinterested person, and was thereafter transcribed under my direction into typewriting by computer; that the witness was given an opportunity to read, correct and sign the deposition.

I further certify that I am not interested in the outcome of said action nor connected with nor related to any of the parties in said action nor to their respective counsel.

IN WITNESS WHEREOF, I have hereunto set my hand this 21ST day of July, 1997

Kumi Taira

KUMI TAIRA, CSR

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TO: RICHARD W. MIZERSKI, Ph.D.

C/O: ROBERT MCDERMOTT, ATTORNEY AT LAW

1450 G. Street, NW

Washington, DC 20005

RE: ENGLE vs. RJ REYNOLDS TOBACCO COMPANY

DATE OF DEPOSITION: July 9, 1997

Your deposition transcript is available at this office or through your attorney. If you have not read, corrected and signed your deposition within 30 days of receipt of this letter, it may be used with full force and effect as though it had been read, corrected and signed. You may contact this office at (415) 777-2111.

Very truly yours,

KUMI TAIRA, CSR NO. 6573

cc: ALL COUNSEL PRESENT

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